



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Sunnybrook, Inc.  
File: B-225642  
Date: April 10, 1987

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### DIGEST

A protest contending that a solicitation's provisions are ambiguous because they are not as specific as the incumbent contractor desires is denied since all provisions to which the protester objects reasonably describe the work to be performed.

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### DECISION

Sunnybrook, Inc. protests certain alleged ambiguities in invitation for bids (IFB) No. F29651-86-B0097 issued by the Department of the Air Force for custodial services at Holloman Air Force Base, New Mexico.

We deny the protest.

The solicitation was issued as a small business set-aside on December 16, 1986 to 90 firms. The scope of work required the contractor to provide all personnel, equipment, tools, materials and supervision necessary to perform the custodial services required.

The Air Force's report on the protest states that four of the issues raised have been resolved by discussions with Sunnybrook and that four more issues remain to be resolved. As Sunnybrook has not disputed this point of the report, this decision will deal only with the unresolved issues.

Before reviewing the four remaining issues, we point out that it is the contracting officer that has the primary responsibility for determining its minimum needs and for drafting the specifications to reflect those needs. East Bay Auto Supply, Inc., B-218437.2, June 24, 1985, 85-1 CPD ¶ 716. Thus, we will not question an agency's specifications unless there is a clear showing that they have no reasonable basis. CMI, Corp., B-216164, May 20, 1985, 85-1 CPD ¶ 572. The specifications, however, must be sufficiently definite

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and free from ambiguity to permit competition on a common basis and an ambiguity exists if the specification is subject to more than one reasonable interpretation. Toxicology Testing Service, Inc., B-219131.2, Oct. 28, 1985, 85-2 CPD ¶ 469. With regard to custodial service contracts, we have held that the specifications, in conjunction with layout diagrams and the opportunity for on-site visits, affords prospective bidders an adequate basis on which to compete intelligently. Triple P. Services, Inc., B-220437.3, Apr. 3, 1986, 86-1 CPD ¶ 318. Moreover, there is no requirement that a specification be so detailed as to eliminate all performance uncertainties and risk. Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 CPD ¶ 687.

Sunnybrook first contends that the solicitation is ambiguous because it does not specifically notify prospective bidders that New Mexico is the only state that imposes a gross receipts tax on firms doing business on United States military installations within that state. We find no merit to this issue. The Air Force points out that the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.229-3(b) (1985), which was incorporated by reference into the solicitation, clearly states that the contract price "includes all applicable Federal, State, and local taxes and duties." First, there is no ambiguity with respect to this matter since the FAR provision quoted above is clear, that is, the contractor will not be reimbursed by the government for any taxes it might have to pay when they are not included in its contract price. The burden to determine applicable state and local taxes is properly placed on bidders because these taxes vary and the bidders generally are more familiar with their application than are the contracting officers. Tumpane Services Corp., B-220465, Jan. 28, 1986, 86-1 CPD ¶ 95. There is, therefore, no basis on which to find that the Air Force's failure to give specific notice of the New Mexico taxes was unreasonable.

Sunnybrook contends the requirement that the contractor supply restrooms so that the supplies do not run out is ambiguous because the contractor cannot be expected to monitor the supplies used in private in the restrooms. The Air Force argues that there is nothing ambiguous about this requirement since there are either enough supplies or there are not. The Air Force states that a properly-stocked toilet-paper dispenser that runs out before the next scheduled service time would not give rise to a discrepancy so long as the item is somehow available to the patron. The Air Force insists that Sunnybrook's interpretation is unreasonably based on the assumption that the quality

assurance evaluator will be unreasonable and it points out that the contractor will have the right to appeal to the contracting officer if the evaluator is unreasonable.

Section C-5 of the solicitation delineates the specific tasks to be performed, with Section 5.2.2 being the task for cleaning and supplying restrooms. Section 5.2.2 states that "The contractor shall perform the following work for the indicated areas on the Task and Frequency Chart, Technical Exhibit 2." Among the tasks are the cleaning and disinfecting of various fixtures, surfaces and floors and "resupply restrooms, so that after resupplying, the restrooms are stocked so that supplies do not run out."

The frequency chart under which these tasks are to be performed range from a frequency of once a month to seven times a week, apparently based on the size and use of the particular facility involved. Obviously a contractor cannot guarantee adequacy of restroom supplies if it inspects a facility only once each month or only a few times a week. Nonetheless, we think that within the context of the specific supplying task to be performed and the obligation of that contractor to keep the restrooms supplied, some rule of reason must be applied. Thus, while the contractor is not obligated to perform the specific cleaning tasks delineated more often than specified in the frequency chart, it would appear to us that an experienced bidder would nevertheless allow for adequate inspection of the facilities in view of its obligation to keep the restrooms adequately supplied. If inspection for resupply is performed in a manner that is commensurate with the requirement, we think that those rare occasions that an individual stall will run out of tissue will not be statistically significant. As pointed out above, a specification need not be so detailed that all performance uncertainties and risks are eliminated. The problems anticipated by Sunnybrook here may not arise and if they do they could be resolved reasonably by the parties under the procedures specified in the contract.


Sunnybrook further contends that the contractor will be required to clean 24 buildings that have porches and entry pads, the dimensions of which have not been accurately determined and furnished to the prospective bidders. Sunnybrook argues that small business owners should not be expected to measure such areas during site visits. The Air Force points to the IFB provisions encouraging site visits and making the bidders responsible for verifying all dimensions. The Air Force asserts that no bidder has been denied access to the site or the right to request clarifications.

In Triple P. Services, Inc., B-220437.3, supra, we noted that custodial services by their nature often require bidders to compute prices based on visual inspections. The bidders here have been given scale drawings of the buildings, invited to ask for any needed clarifications, and encouraged to make site visits. Thus, any bidder needing more information than is available from the drawings and clarifications could obtain it by making site visits. In this regard, Sunnybrook, as the incumbent contractor, has the advantage of obtaining such information in the course of its performance of the current contract. Moreover, in our view, a small business firm with the resources to perform a contract of this magnitude (over 300 buildings) would not find the measurement of the porches and entry pads to be onerous if it needed to know the exact dimensions before computing its prices.

Finally, Sunnybrook objects to a provision requiring the contractor to vacuum clean all carpeted areas so that they are free of visible litter, dust and soil. Sunnybrook contends that although it is possible to remove visible litter and soil with a vacuum cleaner, a speck of dust can always be found if one gets down on his or her hands and knees to inspect a carpet. The Air Force contends that Sunnybrook has based its interpretation on the unreasonable assumption that the quality assurance evaluator will unfairly interpret the contract requirements and again the Air Force points out that the contractor can appeal any unreasonable interpretations to the contracting officer and to even higher authority if necessary.

Nothing in the specification warrants a conclusion that the contractor will be required to remove litter, soil and dust to an extent that it would be invisible to an evaluator on his or her hands and knees. We have held that it is not practicable to draft specifications that attempt to provide solutions to every imaginable problem that might arise, no matter how unlikely or extreme. Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23. Thus, a bidder has an obligation to read an IFB as a whole and in a reasonable manner. Martin Wideker, Engineer, B-219872 et al., Nov. 20, 1985, 85-2 CPD ¶ 571.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel